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Representing the United States of America

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALEJANDRO AVALOS,

Defendant.

Case No. 2:21-cr-00092-JAD-VCF

**Government's Response to Defendant's
Sentencing Memorandum [ECF No. 60]**

Certification: This response is timely filed.

I. Introduction

On May 30, 2020, defendant Alejandro Avalos willfully vandalized federal property when he used a metal bar to shatter the windows of a United States courthouse. His violent and destructive actions contributed to the overall damage to the property in an amount exceeding \$70,000.00. The government recommends that Avalos is sentenced to 21 months imprisonment, followed by three years of supervised release. The government further recommends that the Court order Avalos to pay restitution in the amount of \$71,335.72 jointly and severally with the five separately charged co-defendants. This is consistent with the government's position in the plea agreement (ECF No. 40) and such a sentence is

On May 30, 2020, a large crowd gathered in front of the Foley Federal Building, located at 333 South Las Vegas Boulevard. PSR at ¶ 11. Several individuals broke apart from the crowd and began to damage the building. *Id.* at ¶ 12. Windows were shattered, the walls of the building were spray painted with obscenities and anti-law enforcement graffiti, signs were destroyed, and the landscaping was lit on fire. *Id.* Members of the crowd went to the east entrance of the building and tried to break the windows in attempt to make entry. *Id.* An on-duty Federal Protective Service Security Officer, T.W., who was stationed inside, witnessed the damage and attempted break-in. *Id.* at ¶ 13. T.W. stated the crowd outside could see him inside the lobby and they were chanting, “Get him! Get the Cop!” *Id.* T.W. was in fear of the crowd breaking through the windows and the potential actions against his person if the crowd successfully made entry. *Id.*





Damage to front of Foley Federal Building

Avalos, who happened upon the crowd while delivering food that evening, decided to join in the destruction and vandalism. *Id.* at ¶ 24. Avalos used a metal bar from his carjack to repeatedly strike the building's windows, causing them to shatter. *Id.* at ¶ 24–25. After damaging the federal courthouse, Avalos and other members of the crowd continued to an EZ Pawn store down the street. *Id.* Avalos used the same metal bar to break into and loot the store. *Id.*

On May 10, 2021, Avalos pleaded guilty to Depredation Against Property of the United States, in violation of 18 U.S.C. §§ 1361 and 2. ECF No. 41.

III. Sentencing

In conformity with the plea agreement, the government respectfully requests that the Court sentence Avalos to the low end of the Guideline range calculated by the Court, followed by three years of supervised release. If the Court accepts the U.S. Probation Office's current calculation of a Total Offense Level of 10 and a Criminal History Category of V, a sentence at the low end of the resulting Guidelines range is 21 months

1 imprisonment. PSR at 9 and 34.

2 *a) Criminal History Calculation*

3 The U.S. Probation Office determined that Avalos has 12 criminal history points,
4 resulting in Criminal History Category V. PSR at ¶ 65. Avalos objects to three convictions
5 used in the calculation, claiming the offenses were either dismissed or no jail time was
6 imposed. PSR at 37. These assertions, however, are unsubstantiated and inconsistent with
7 court records obtained by the United States Office of Probation and Parole. When
8 calculating a defendant's criminal history, "a defendant must prove the invalidity of a prior
9 conviction by a preponderance of the evidence." *United States v. Dominguez*, 316 F.3d 1054,
10 1056 (9th Cir. 2003) (quoting *United States v. Allen*, 153 F.3d 1037, 1040 (9th Cir. 1995)). As
11 noted in the PSR, court records reviewed by the United States Office of Probation and
12 Parole reflect jail sentences for all three convictions.¹ PSR at 37. Because Avalos has
13 presented no evidence to support his claim that the convictions should not be included in his
14 criminal history calculation, this Court should accept U.S. Probation's criminal history
15 calculation and sentence Avalos as a Criminal History Category V.

16 *b) Term of Imprisonment*

17 The government believes a 21-month sentence is sufficient but not greater than
18 necessary, to achieve the sentencing goals of 18 U.S.C. §3553(a). In particular, the requested
19 sentence reflects the seriousness of the offense, as well as the need to promote respect for the
20 law, deter future criminal conduct, and provide just punishment. Avalos was not at the
21 protest. Instead, he chose to join with the group damaging the federal courthouse and bring
22 a metal bar to use to inflict more damage. His willful participation promoted "violence,
23

24 ¹ The government spoke with U.S. Probation on October 28, 2021, who advised they will bring copies of these court records to the sentencing hearing for review.

1 *Kostan*, 2:21-cr-81-APG-DJA; *United States v. Simon*, 2:21-cr-73-JCM-EJY; *United States v.*
2 *Lewis*, 2:21-cr-44-JAD-DJA; and *United States v. Cherry*, 2:21-CR-247-APG-NJK.

3 Restitution is payable to:

4 General Services Administration (GSA)
5 Attn: Herb Orrell
6 333 S. Las Vegas Blvd, #5501
7 Las Vegas, NV 89101

8 **V. Conclusion**

9 The government respectfully requests that this Honorable Court sentence Avalos to
10 the 21 months imprisonment, followed by three years of supervised release; and that the
11 Court order restitution in the amount of 71,335.72 joint and several with the separately
12 charged co-defendants.

13 DATED this 2 day of November, 2021.

14 Respectfully submitted,

15 CHRISTOPHER CHIOU
16 Acting United States Attorney

17 /s/ Lisa Cartier-Giroux
18 LISA CARTIER-GIROUX
19 Assistant United States Attorney

20 /s/ Kimberly Sokolich
21 KIMBERLY SOKOLICH
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